

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JEFFREY BUCHANAN,

Plaintiff,

v.

COUNTY OF ALAMEDA; WAYNE TUCKER,  
individually and in his capacity as  
Chief Probation Officer for the  
County of Alameda; and TABULA RASA  
TREATMENT HOMES, INC.,

Defendants.

No. C 04-1130 CW

ORDER DENYING  
DEFENDANT TABULA  
RASA'S MOTION FOR  
ATTORNEYS' FEES

Defendant Tabula Rasa Treatment Homes, Inc., (Tabula Rasa), one of the prevailing parties in this action, moves pursuant to 42 U.S.C. § 1988 for an award of attorneys' fees in the amount of \$60,015.50. Counsel for Plaintiff Jeffrey Buchanan has filed a declaration in opposition to the motion.<sup>1</sup> The matter was taken under submission on the papers.

Having considered all of the papers filed by the parties, the

<sup>1</sup>Tabula Rasa noticed its motion for attorneys' fees for hearing on September 9, 2005, and Plaintiff's opposition was therefore due on August 19, 2005. Walter Davis' two-page declaration in opposition to the motion was not filed until August 22, 2005, and was not accompanied by either a stipulation or a motion to change time as required by Local Rules 6-2 and 6-3. The Court therefore will not consider the arguments in the Davis Declaration, of which the only substantive point is Tabula Rasa's failure to provide invoices generated by its attorneys. However, the Court will not, as Tabula Rasa urges, grant its motion for attorneys' fees simply because no timely opposition was filed.

1 Court DENIES Tabula Rasa's motion for attorneys' fees.

2 A district court may authorize an award of attorneys' fees to  
3 a prevailing party in a civil rights action under the Civil Rights  
4 Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988. An award of  
5 attorneys' fees may be made to a civil rights defendant only where  
6 the court finds that the plaintiff's action was "unreasonable,  
7 frivolous, meritless, or vexatious." Legal Services of Northern  
8 California, Inc. v. Arnett, 114 F.3d 135, 141 (9th Cir. 1997).

9 "Only in exceptional cases should defendants be awarded attorneys'  
10 fees in civil rights cases." Mitchell v. Los Angeles Community  
11 College Dist., 861 F.2d 198, 202 (9th Cir. 1988).

12 The background of this civil rights action is set forth in the  
13 Court's July 21, 2005 order granting Defendants' motions for  
14 summary judgment. Although Plaintiff's case was not meritorious,  
15 the Court finds that he did not file this action frivolously.  
16 Plaintiff believed in good faith that Tabula Rasa administered  
17 Paxil to him, that Paxil was not approved for juvenile use, and  
18 that it caused him to be at increased risk for suicide. The Court  
19 found that Plaintiff "failed to produce evidence sufficient to  
20 raise a triable issue of material fact regarding Tabula Rasa's  
21 deliberate indifference to him," and also failed to introduce  
22 evidence of spoliation sufficient to create an adverse inference of  
23 deliberate indifference. July 21, 2005 Order at 11-12. However,  
24 lack of merit does not mean that Plaintiff's complaint as filed was  
25 unreasonable, frivolous or groundless. Cf., e.g., Saman v.  
26 Robbins, 173 F.3d 1150, 1157 (9th Cir. 1999) (finding abuse of  
27 discretion where district court failed to award attorneys' fees in  
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1 civil rights case where defendant's involvement in case was very  
2 limited); Franceschi v. Schwartz, 57 F.3d 828, 832 (9th Cir. 1995)  
3 (upholding award of fees where attorney plaintiff knew or should  
4 have known that municipal defendants were entitled to immunity);  
5 Townsend v. Holman Consulting Corp., 914 F.2d 1136 (9th Cir. 1990)  
6 (finding plaintiff had failed to conduct competent pre-filing  
7 inquiry where undisputed facts showed defendant not involved in  
8 alleged acts). Furthermore, Tabula Rasa has made no attempt,  
9 except through attorney argument, to show that Plaintiff brought  
10 this action in bad faith or purely out of a desire for settlement  
11 money. Based on the facts of the case, it appears that Plaintiff  
12 is a young man with mental health issues who is unlikely to have  
13 the wherewithal to pay attorneys' fees.

14 Tabula Rasa also asks the Court to tax attorneys' fees against  
15 Plaintiff's counsel, but does not cite the statute under which it  
16 makes this request. Section 1988 does not appear to provide for  
17 such an award. The Court does have the inherent power to impose  
18 sanctions against a lawyer who "willfully abuses judicial  
19 processes." Roadway Express, Inc., v. Piper, 447 U.S. 752, 766  
20 (1980). In order to impose such a sanction, the Court must "make a  
21 specific finding as to whether counsel's conduct in th[e] case  
22 constituted or was tantamount to bad faith." Id. at 767. In  
23 addition, the Court has statutory authority to hold counsel  
24 personally liable for attorneys' fees as a sanction under 28 U.S.C.  
25 § 1927. That statute provides,

26 Any attorney or other person admitted to conduct cases in any  
27 court of the United States or any Territory thereof who so  
28 multiplies the proceedings in any case unreasonably and

1 vexatiously may be required by the court to satisfy personally  
2 the excess costs, expenses, and attorney's fees reasonably  
incurred because of such conduct.

3 Tabula Rasa has shown no grounds on which the Court could make a  
4 specific finding that Plaintiff's counsel's conduct was tantamount  
5 to bad faith. Nor has Tabula Rasa shown that counsel's conduct has  
6 "unreasonably and vexatiously" multiplied the proceedings.  
7 Therefore, the Court declines to award attorneys' fees against  
8 Plaintiff's attorney.

9 For these reasons, the Court concludes that this is not an  
10 exceptional civil rights action so meritless as to warrant an award  
11 of fees to Tabula Rasa. Tabula Rasa's motion is DENIED (Docket No.  
12 160).

13 IT IS SO ORDERED.

14 Dated: 10/5/05

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16 CLAUDIA WILKEN  
17 United States District Judge  
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